IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2656 of 2005
With
SPECIAL CIVIL APPLICATION No. 14898 of 2005
To
SPECIAL CIVIL APPLICATION No. 14919 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVTADIN ZURARI YADAV & 22 - Petitioner(s)

Versus

MANAGER - Respondent(s)

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Appearance :

MR PRABHAKAR UPADYAY for Petitioner No(s).: 1,2,3,4,5,6, 7,8,9,10,11,12,13,14,15, 16,17,18,19,20,21,22,23.

M/S TRIVEDI & GUPTA for Respondent No(s).: 1.
MR KUNAN B NAIK for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 05/08/2005

ORAL JUDGMENT

1. As the common questions of law and facts arise in this group petitions, they are heard together and the same are being disposed of by this common judgment and order.

2. In these petitions, the respective petitioners have challenged the legality and validity of the common order passed by the Industrial Court, Ahmedabad dated 8.1.2003 passed in Review Application No.4 to 58 of 2001 in allowing the said review applications and modifying and/or quashing and setting aside the judgment and orders dated 30th April, 2001 passed by the Industrial Tribunal, Ahmedabad passed in Revision Application No.51 / 2000 to Revision Application No.103 of 2000.

3. The proceedings were pending before the Labour Court at the instance of the petitioners by way of BIR Applications, in which, the common respondent management submitted application below Exh.56 in the said application more particularly in application No.187 of 1997 raising a preliminary issue / objection by submitting that as the respondent management company is before the BIFR, considering Section-22 of SICA, proceedings under the BIR Act before the Labour Court, are not maintainable. The Labour Court, Ahmedabad considering the fact and the evidence on record held that such an issue is not

required to be considered and treated as preliminary issue as the same prima facie seems to be a mixed question of law and facts and cannot be decided without adducing any evidence and therefore, disposed of the said application by order dated 10th August, 2000 and had passed the order that contentions and objections which are raised in the said application will be considered at the time of final disposal of the applications by the Labour Court as and when they are decided on merits finally.

4. Being aggrieved and dissatisfied with the order passed by the Labour Court, Ahmedabad dated 10th August, 2000, the respondent management preferred Revision Application No.51 of 2000 to 105 / 2000 under Section-85 of the BIR Act and the Industrial Tribunal by its judgment and order dated 30th April, 2001 after considering the rival submissions made on behalf of the parties as well as the cited decision at the bar, dismissed all the revisions applications on merits, however, directed the Labour Court to decide and dispose of the main applications on merits as early as possible. It also appears from the record that thereafter the respondent management preferred the Review Application No.4 of 2001 to 58 of 2001 and requested to review the judgment and order dated 30th April, 2001 passed in Revision Application NO.51 of

2000 to 105 of 2000. The Industrial Tribunal by its common order dated 8.1.2003 allowed the aforesaid review applications by quashing and setting aside the common order dated 30th April, 2001 passed in Revision Applications Nos.51 of 2000 to 105 of 2000 and directed the Labour Court to decide and dispose of the application submitted by the respondent management raising preliminary issue on merits first. Being aggrieved and dissatisfied with the common order dated 8.1.2003 passed by the Industrial Tribunal, Ahmedabad passed in Review Application No.4 / 2001 to 58 of 2001, the petitioner – original complainants have preferred the present special civil applications under Article 226 and 227 of the Constitution of India.

5. Shri Prabhakar Upadhyay, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Industrial Tribunal has exercised the powers of review as if it was deciding the revision application and / or appellate jurisdiction against the order passed in revision application. It is further submitted that the Industrial Tribunal has again re-appreciated the entire evidence and the record and has thereafter decided the review application and quashed and set aside the order passed in Revision Applications exceeding his jurisdiction of review and therefore, it is requested to allow the present special civil

applications. It is submitted that when the revision applications are decided on merits and that there was no error apparent on the face of the record pointed out by the respondent management and the respondent management has again argued the matters on merits in Review application, the Industrial Tribunal ought to have held that such review applications are not maintainable and / or the Industrial Tribunal ought not to have allowed the review applications and ought not to have quashed and set aside the orders passed in the revision applications as if the Industrial Tribunal was deciding the revision application afresh and / or as if the Tribunal is exercising the powers as an appellate authority.

6. Shri Prabhakar Upadhyay, learned advocate has relied upon the judgments of the Hon'ble Supreme Court in case of MEERA BHANJA (SMT) V. NIRMALA KUMAR CHAUDHRY (SMT.), (1995) 1 SCC 170 , wherein the Hon'ble Supreme Court was considering the scope of review powers of the High Court and it is submitted that the Hon'ble Supreme Court has held that review must be confined to error apparent on the face of the record and that error must be such as would be apparent on mere looking of the record without requiring any long drawn process of reasoning and that reappraisal of the entire evidence on record for finding the error would amount to exercise of appellate

jurisdiction which is not permissible. He has also relied upon the decision of the Hon'ble Supreme Court in case of PARSION DEVI AND OTHER VS. SUMITRA DEVI AND OTHERS reported in (1997) 8 SCC 715, wherein also, the Hon'ble Supreme Court was considering the scope and ambit of review and the scope of jurisdiction in review proceedings. It is submitted that the Hon'ble Supreme Court has held that mistake or error apparent on the face of the record is one which is self evident and does not require process of reasoning and distinct from “erroneous decision”. It is further submitted that as held by the Hon'ble Supreme Court in the aforesaid decision, rehearing the matter for detecting an error in earlier decision and then correcting the same do not fall within the ambit of review jurisdiction and review jurisdiction can not be used as an appellate jurisdiction. Shri Upadhyay, learned advocate has further relied upon on many other decisions. Under the circumstances, it is requested to allow the present special civil applications.

7. Per contra, Shri Kunan Naik, learned advocate for respondent management has vehemently tried to support the judgment and order passed by the industrial Tribunal passed in Review Applications. It is submitted that while deciding the revision applications, Section-32 of the

SICA was not considered and some other aspects were also not considered while considering the revision applications and therefore, the Industrial Tribunal was justified in quashing and setting aside the order passed in the Revision Applications while allowing the review applications. It is submitted that even otherwise the respondent could have preferred and challenged the orders passed in revision application before the higher forum and if this Court is of the opinion that such review application was not maintainable and / or exercise of the review powers by the Industrial Tribunal setting aside the order passed in Revision Application was not warranted,in that case, the respondent management would be losing their right to challenge the said order passed by the revisional authority now before the appropriate higher forum and therefore, it is requested to dismiss the present special civil applications.

8. Heard the learned advocates appearing on behalf of the parties.

9. It is required to be noted that the revision applications were dismissed by the Industrial Tribunal confirming the order passed by the Labour Court on merits after dealing with all the submissions and considering the many judgments which were cited at bar on behalf of the

parties. Therefore, it was the decision on merits by the Industrial Tribunal. Now by and large the on the same ground and relying upon the same judgments and some other judgments, review applications came to be filed by the respondent management and in fact, there is no observations by the Industrial Tribunal that there was an error apparent on the face of the record, for which, the order passed in revision applications are required to be quashed and set aside. On going through the order passed by the reviewing authority in review applications, it appears to this Court that the Industrial Tribunal has passed the order in review applications as if the Industrial Tribunal was either deciding the revision applications and/or exercising the appellate jurisdiction. Unless it is found that there was an error apparent on the face of record in the order at the time of dismissing the revision applications, the review applications were not maintainable. As held by the Hon'ble Supreme Court, review must be confined to error apparent on the face of the record and that error must be such as would be apparent on mere looking of the record without requiring any long drawn process of reasoning and that reappraisal of the entire evidence on record for finding the error would amount to exercise of appellate jurisdiction which is not permissible. In the decision referred to above, it is also held that mistake or error apparent on the face of the record is one which is self

evident and does not require process of reasoning and is distinct from “erroneous decision”. It is held by the Hon'ble Supreme Court in the aforesaid decision that rehearing the matter for detecting an error in earlier decision and then correcting the same do not fall within the ambit of review jurisdiction and review jurisdiction can not be used as an appellate jurisdiction. Considering the set of facts of these petitions, exercise of powers by the Industrial Tribunal allowing the review application is nothing but exceeding the jurisdiction not vested in it and is beyond the scope of the review and the Industrial Tribunal has decided the review application as if it was deciding the main revision application and considered the judgments afresh and the other provisions, which were not permissible as held by the Hon'ble Supreme Court in the aforesaid cases.

10. Under the circumstances, without expressing any opinion on merits of the judgment and orders passed by the Industrial Tribunal in revision applications and only on the ground that order passed by the Industrial Tribunal in Review Application was not warranted and the same is nothing but exceeding the jurisdiction and beyond the scope of the review jurisdiction, present special civil applications deserve to be allowed and the judgment and orders passed by the Industrial Tribunal

in review applications are also required to be quashed and set aside.

11. For the reasons stated hereinabove, all the petitions succeed. The orders passed by the Industrial Tribunal dated 8.1.2003 passed in Review Application Nos.4 of 2001 to 58 of 2001 are hereby quashed and set aside. However, it is made clear that this Court has not expressed any opinion on the merits of the orders passed in Revision Applications Nos.51 to 105 of 2000 and it will be open for the respondent management to challenge the same before appropriate higher forum if permissible under the law.

Rule, in each petition, is made absolute to the aforesaid extent with no order as to costs.

[M. R. Shah, J.]

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